

Remarks

The Examiner has rejected independent claims 1, 11 and 12 under 35 U.S.C. §102(b) as anticipated by Enomoto, U.S. Patent No. 5,709,535. Applicant respectfully requests reconsideration of this rejection in view of the below remarks.

Independent Claim 1

Enomoto does not anticipate independent claim 1 because all of the elements in claim 1 are not shown in this reference. Specifically, Enomoto at least does not disclose a “compressor head having a discharge channel into which the at least one flap of [the] second plate opens.”

As noted by the Examiner, Enomoto discloses a first plate adjacent the pump mechanism, and a second plate adjacent the first plate, wherein the first and second plates each have flaps covering corresponding apertures in the other plate. However, Enomoto does not disclose that the second plate has flaps which open into the compressor head discharge channel. Though the Office Action indicates that this is clearly shown in Figures 3 and 7, Applicant respectfully submits that, upon close inspection, this is not the case.

Figure 7, of course, simply illustrates the arrangement of the flaps and apertures, but does not illustrate the relationship between the flaps and the compressor head discharge channel. Turning to Figure 3, the inclined member 30a shown in the drawing is actually a portion of a stopper plate 30—it is not a flap of the second plate that is mounted adjacent the first plate (which is in turn mounted adjacent the pump mechanism). As stated at Col.4, Ins 45-46 & Col.5, Ins 36-37, Figure 4 is an enlarged view of the relevant portion of Figure 3. As shown more clearly in Figure 4, the member 30a is actually a portion of the stopper plate 30. This member 30a is a rigid portion of the stopper sheet that is bent to a predetermined angle, which specifically prevents the flap 27a of the second plate 27 from flexing up into the compressor head. See Fig. 4; Col.5, Ins 51-62.

Moreover, Applicant notes that it would not have been obvious to modify Enomoto in order to arrive at the claimed invention, as this would require changing the fundamental design of Enomoto. Applicant notes that, in order for the claimed invention to be obvious over the prior art, there must be some suggestion or motivation in the reference to make the relevant modification. See, e.g., *In re Mills*, 916 F.2d 680, 682, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990) (fact that prior art “may be capable of being modified to run the way the apparatus is claimed, there must be some suggestion or motivation in the reference to do so.”). Applicant notes that the fact that a prior art design could conceivably be changed to arrive at the claimed invention does not render

the claimed invention obvious—the prior art must suggest the desirability of the modification. See MPEP 2143.01.

In this case, Applicant respectfully submits that, not only does the prior art in no way suggest the desirability of an arrangement in which the at least one flap of the second plate opens into a discharge channel of the compressor head, but the reference explicitly teaches against such a change. It is a fundamental aspect of the Enomoto design to use the stopper plate to limit the flexing of the flap in the valve plate. Accordingly, the reference would clearly not suggest to one skilled in the art to design the compressor without a stopper plate such that the flaps of the second plate open up into the compressor head discharge channel.

Indeed, it is the very purpose of the Enomoto design to improve upon previous rivet/rivet hole stopper designs by replacing such mechanisms with a stopper plate. Col.1, ln 52 – Col.2, ln 20. For this reason, making the necessary modification to Enomoto in order to arrive at the presently claimed invention would render it unsuitable for its intended purpose, which is also improper. See MPEP 2143.01 (improper to reject a claim as obvious over a prior art reference when the modification would render the prior art unsatisfactory for its intended purpose; *In re Gordon*, 733 F.2d 900, 221 USPQ2d 1125 (Fed. Cir. 1984).

Independent Claim 11

Enomoto does not anticipate independent claim 11 because all of the elements in claim 11 are not shown in this reference. Specifically, Enomoto at least does not disclose a cover “mounted adjacent to said second plate.”

As explained above in reference to claim 1, Enomoto discloses a compressor that, as a fundamental aspect of its design, employs a stopper plate between the second valve plate and the cover. Accordingly, Applicant respectfully submits that it does not disclose a cover *mounted adjacent* the second plate, as that plate is defined in the rest of the claim (i.e., mounted adjacent a first plate, which is in turn mounted adjacent the pump mechanism, the first and second plates having corresponding flexing flaps/apertures).

Similarly, for the same reasons explained above, the invention recited in claim 11 would not be obvious over Enomoto, as modifying the Enomoto design to eliminate the stopper plate would be contrary to its explicit teachings and its intended purpose.

Independent Claim 12

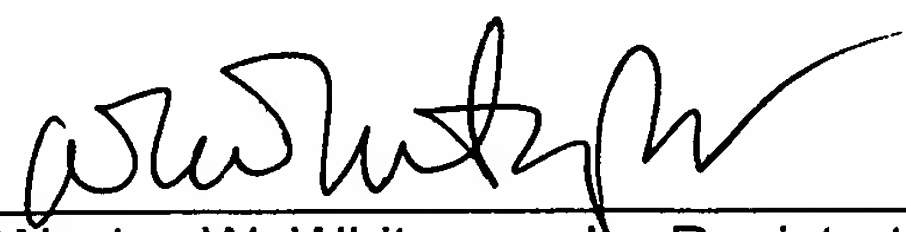
As with independent claim 11, Enomoto does not anticipate or render obvious independent claim 12 because it does not disclose or suggest a design that employs a cover “mounted adjacent to said second plate.”

Additionally, Enomoto does not anticipate or render obvious claim 12 because it does not disclose an "inlet port in said swash plate housing for introducing fluid that is to be passed through said plates." Applicant submits that the disclosure of Enomoto does not in any way teach or fairly suggest such an inlet port. Indeed, such a port would not work in the Enomoto design, as the Enomoto reference does not disclose any passageway that could communicate fluid from the swash plate chamber to the cylinder bores.

It is respectfully submitted that claims 1-17, all of the claims remaining in the application, are in order for allowance, and early notice to that effect is respectfully requested.

Respectfully submitted,

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